

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

ALVIN FRANKLIN, JR.,
Plaintiff

V.

NO. 3:96CV143-B-B

CALHOUN COUNTY, MISSISSIPPI,
SHERIFF'S DEPARTMENT; CALHOUN
COUNTY, MISSISSIPPI; and BILLIE
HITT, INDIVIDUALLY AND IN HIS
CAPACITY AS FORMER SHERIFF OF
CALHOUN COUNTY, MISSISSIPPI
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the defendants' motion for partial summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

On or about June 20, 1995, the plaintiff was arrested for public intoxication and placed in the Calhoun County jail. The plaintiff was incarcerated with approximately thirty other inmates, some of whom were convicted felons. Sometime between the hours of two and seven p.m., the plaintiff was assaulted by several inmates. The plaintiff contends that during the time of the alleged assault, the cell was not supervised by any member of the sheriff's department.

The plaintiff was discovered in an injured condition and moved to a private cell in the women's portion of the jail. When he was

subsequently found collapsed on the floor, the plaintiff was transported to the local hospital to be treated for cardiac arrest.

The plaintiff has filed suit for various constitutional violations under 29 U.S.C. § 1983, as well as for negligence under state tort law. As to the § 1983 claim, the defendants have moved for partial summary judgment in favor of Sheriff Hitt in his individual capacity on the grounds of qualified immunity. The defendants further seek partial summary judgment in favor of all defendants on the state law claims on the grounds of sovereign immunity.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor

of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

A. Qualified Immunity
Sheriff Hitt, Individual Capacity

Upon due consideration, the court finds that there are genuine issues of material fact, including but not limited to the sheriff's knowledge not only as to the plaintiff's incarceration, but also as to the general conditions that existed at the jail on the day of the plaintiff's incarceration. Therefore, the court finds that the defendants' motion for partial summary judgment on the grounds of qualified immunity should be denied.

B. Sovereign Immunity
Sheriff Hitt, Individual Capacity

The State of Mississippi and its political subdivisions have traditionally been immune from suit. Sovereign immunity affords protection to state employees in their individual capacity as well. The state legislature has waived, to a limited extent, the state's

sovereign immunity, as set forth in Miss. Code Ann. § 11-46-1 et seq. (Supp. 1996). However, such waiver does not extend to state employees in their individual capacity. While a state employee may be joined in an action against a governmental entity in a representative capacity, no employee may be held personally liable for any act or omission occurring within the course and scope of the employee's duties. Miss. Code Ann. § 11-46-7(2) (Supp. 1996). The allegations against Sheriff Hitt involve acts and omissions that occurred within the course and scope of his duties as sheriff of Calhoun County. Therefore, the court finds that Sheriff Hitt is entitled to sovereign immunity on the state law claims raised against him in his individual capacity.

C. Sovereign Immunity
Calhoun County and Sheriff Hitt, Official Capacity

Upon due consideration, the court finds that there are genuine issues of material fact, including but not limited to whether Calhoun County, acting by and through its employees in the duties of police protection, acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of the injury, as set forth in Miss. Code Ann. § 11-46-9(1)(c) (Supp. 1996). Therefore, the court finds that the defendants' motion for partial summary judgment in favor of the county and Sheriff Hitt in his official capacity on the grounds of sovereign immunity should be denied.

CONCLUSION

For the foregoing reasons, the court finds that the defendants' motion for partial summary judgment on the grounds of qualified immunity should be denied. The court further finds that the defendants' motion for partial summary judgment on the grounds of sovereign immunity should be denied as to Calhoun County and Sheriff Hitt in his official capacity and granted as to Sheriff Hitt in his individual capacity. Finally, the plaintiff has filed a motion for leave to file a surreply brief. The court finds that the plaintiff's motion should be denied.

An order will issue accordingly.

THIS, the _____ day of April, 1997.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE